

Law vol. 12.

A N
INTERESTING ADDRESS

TO THE

Independent Part of the People of England,

O N

L I B E L S,

A N D T H E

Unconstitutional Mode of Prosecution by INFOR-
MATION EX OFFICIO, practised by the

A T T O R N E Y G E N E R A L,

WITH A VIEW OF THE CASE OF

J O H N H O R N E, Esq.

And a Candid REFUTATION of the

D O C T R I N E of I N F O R M A T I O N S,

A S L A I D D O W N I N

B L A C K S T O N E ' S C O M M E N T A R I E S.

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(11)

DEDICATION.

To all the GENTLEMEN of the LAW.

GENTLEMEN,

IF, in the perusal of the following Address to the Independent People of England, you shall find that your attention has not been misemploy'd, nor your senses insulted by the arguments of a man in no higher station than a law student, you will not regret that he has studied in reason and common sense, to explode a species of prosecution for an imaginary crime, which, on examination, appears to disgrace all our law books, and our highest court of criminal justice.

If, on the other hand you should, from superior ability, and a more accurate knowledge of the spirit and principles of our constitution, discover false conclusions, from mistaken premises, your indulgence

indulgence and candour will be requested to excuse what you cannot approve.

I have a respect for the profession of the law, and glory in the name of a true-born Englishman. In lamenting the violation of our constitution, and the abandoned corruption of political affairs, I have done no more than my superiors, whose names and characters I revere; and though the present subject has been discussed by an artless and simple pen, if it does not rebel against the laws of decency, and constitutional liberty, I shall hope to find that my humble reasoning will not be offensive, and that a doctrine apparently reserved for arbitrary purposes, will soon be abolished, or at least universally condemned.

I am,

With all proper Respect,

Your Humble Servant,

The Author.

Third, (a virtuous and benignant King) have
 viewed with each other who shall wage discord in
 the dirty channels of administration, and who

shall advance their country's welfare and for
 private advantage.—Government has abused
 the whole of this important time in wil-
 ful error and general fraud. Ministers have
 flattered to withdraw themselves from the interests
 of the people (whose interests in truth they are)
 and to attach themselves to the King and his

INTERESTING ADDRESS, &c.

like unto the delusive flatteries of Julius Ce-
 sar, the hour to bring about their own
 purposes, and by turning themselves to dis-

EVER since his present Majesty (whom
 God preserve) came to the throne, his kingdom
 has suffered almost a continued concussion by
 the violation of our constitution, and the exor-
 bitant power of his respective ministers.—
 Throughout the present reign, we have observed
 (with pain is it recollected) that public affairs
 have been conducted with obstinacy, and in con-
 tempt of that opposition which will, so long as
 the debates of both Houses of Parliament shall
 be preserved in print, be read with admiration
 and praise.—Our respective rulers, (some few
 only excepted) since the accession of George the

[Third,

Third, (a virtuous and benignant King) have vied with each other who shall wade deepest in the dirty channels of administration, and who shall sacrifice their country's welfare most for private advantage.—Government has abounded the whole of this inglorious time in wilful error and general abuse. Ministers have studied to withdraw themselves from the interests of the people, (whose servants in truth they are) and to attach themselves to the King and his court. — They have artfully cast out the tub to the whale, the lure to the multitude, like unto the delusive largesses of Julius Cæsar, the better to bring about their own purposes, and by serving themselves to distress their country.—They have announced (having previously lulled the best of Princes on their side) that those subjects are enemies to their King; who, from feelings of humanity, and a love of liberty, presume to speak the dictates of their hearts, or arraign what in ministers appears notoriously destructive of English freedom.—To check their schemes, while sporting with all that is dear to us, is criminal in their estimation, beyond compare; for which, no rancour or resentment appears sufficient in return.

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While the enemies of our liberties are active and vigilant, to seize every occasion to encrease their own power and profit, and while we are timid and thoughtless on our safety, our public complaints can never be relieved, but will rather be encreased; to prevent this, it is time to awake from that lethargy into which we have long been thrown, and examine in the hour of trial and necessity, our true condition; corruption and venality will otherwise spread wider and wider over this once prosperous country, until it will be impossible to root them out. They will not die away of course: they are the offspring of tyrants, and tyrants will (unless restrained) keep them alive.

If we look into our own history, no far-back than 1688, we shall find that we have either not been able to keep up our constitution as then settled, because it was imperfectly settled; or because we have been until the present reign (which God prolong) in the hands of foreign kings, and of ministers calculated and disposed to try experiments at the price of liberty and virtue; ministers who have insulted our generosity, and by introducing corruption, have, in a degree, undone what was done in the expulsion of the *Stewarts*. Endeavours are meditated to persuade us that all is safe;

safe; but a retrospection on our complaints, made in the year 1769, will bring contempt and abhorrence on the causes of them. They were then carried to the foot of the throne by the livery of London, who represented, that the right of trial by jury, was invaded, as well as the force of the Habeas Corpus act: that an individual had been imprisoned without trial, conviction, or sentence: that the military had been employed where peace officers would have been sufficient; and that they had murdered those subjects who they ought only to have apprehended—that the murderers had been concealed—that arbitrary taxes had been imposed in the Colonies—that the Ministry had procured a rejection from a seat in parliament, of a member not disqualified by law, and a reception of one not chosen by a majority of the electors—that the payment of pretended deficiencies in the civil list, had been procured without examination—that a defaulter of unaccounted millions had been rewarded instead of punished; and that the blood-enveloped beings had been thanked for destroying the lives of the innocent and unarmed in St. George's fields, in order to quell the riot of an inconsiderate, yet exasperated mob. These were heavy complaints, and sad to reflect upon, but a part of the many we have had reason to make within the present reign, the result

sult and consequence of our representative body having lost its efficiency, which, instead of being what it was intended to be, (our guard against the encroachments of King and court) is in the high road to be little more than a *bastion* of the Ministry; or a *French* parliament, to register *royal edicts* in; a Roman senate (in the Imperial times) to give the shadow of a free government, but in fact, to accomplish the schemes of a profligate junto.

We are told from the throne of the *authority of law*, and the necessity of *subordination* in language, which among freemen perplexes the idea of either: the former is pronounced in contradiction to the *first spirit* of our constitution; the latter, as we might expect among slaves.

The firmness shewn by our brethren in America against the same oppression, as to us it would be to have taxes imposed on us by an edict from the King, has by **AUTHORITY** been pronounced sedition and rebellion; but with due submission to such authority, and with more respect to truth and justice, we may ask when the *illustrious* Hampden resisted the lawful Sovereign's demand of an *unlawful* tax, because he

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had no voice in laying it on, was he too guilty of sedition and rebellion? if he was, we are all Rebels but the Jacobites; for the revolution was brought about with a design to prevent a man's property being seized without his consent, which makes it the same to our Colonists to be taxed by the Parliament of Britain, as that of Paris; and yet it is become almost criminal to deny the *Sovereignty* of our Parliaments; or in more modern words, its *supremacy*, notwithstanding the truth is, that sovereignty can dwell no where but *among the people*, who have, in despite of the learned Blackstone, a right to exert it without any "urgency of distress," without any provocation by government, if they think they can be happier under one mode than another, and can bring it about without greater inconveniencies than the future advantages are likely to ballance. They have an undoubted right to change or new model their government, when necessity, and their general safety, may require it. Government arises from them, and those, into whose hands they trust it, are but trustees for their common welfare. The idea of government, is only an authority of the *many* over the *few*: whenever therefore it assumes a power of opposing the sense of a *majority*, it is downright tyranny. Judge Blackstone, by plac-

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ing the *sovereignty* in the *parliament*, seems clearly wrong in his idea; because, as may be expected, in the weakness of human nature, parliament is fallible, and has done many wrong things, which, if sovereign or supreme, it would have been impossible to correct. Hence, next under God, sovereignty is immediately in the people at large, who delegate to their governors all the power they have, which in the nature of a free state, is (to make use of a Chancery expression) no more than a resulting trust. It would be absurd to say that governors give power to the people; for without people, there would be no governors. With the People then is all power; and when their trustees abuse it in the characters of governors, they *only* have the Sovereignty to withdraw it from them.

It is the exorbitant power or authority of government we have reason to condemn, as tending in time and from our own submission, to the artifice and poison of our governors, to rob us of our liberties, and leave us meer instruments for their use and abuse.—If we are corrupt (which indeed we are) it is because our superiors have corrupted us.—We know we are unequally represented in parliament, and that our representatives are chiefly *beggars*, which is

foundation of our public ills:—We send up those men as our agents, who, for selfish purposes, have lavished their property among us, to intoxicate us into an approbation of them as members of a part of our state, and blinded by folly, temporary licentiousness, and private profit, we are ignorant that those who represent us, have indulged us in a periodical libation to Bacchus, for the sake of having it in their power to oblige the court when returned by us, and in order to have that obligation compensated in *places* or *pensions*. So that whatever the English constitution is in theory, liberty now is little more than a name, and our parliament appears to be the state of a monarchy, at a time we are scarcely a remove from passive slavery. Judge Blackstone in his chapter “on the nature of laws in general,” has attempted to shew that our government is all perfection, and that the respective branches of it, are independent of the other; but the excellencies he attributes to each, are so imaginary, that they have been doubted as true or reasonable; for in regard to the independence of any one branch of our legislature on the other, it seems a paradox in terms, because it is very well known to a common observer, that the King, and most of his Lords, have great influence in the election of members

members of parliament: that the King can at a minute's warning put an end to the existence of the house of commons, and that he has also great influence over both houses, by offices of dignity and profit, given and taken away again at pleasure; from whence, one may rather say, that this independence in the three branches of our state, and the perfection of it when they are knit together, so ingeniously made out, or attempted to be made out, by the learned Blackstone, is little more than dependence and imperfection.—Wherever there is influence, there can be no independence, and where independence is wanting, there can be no perfection; therefore, while we live under the shadow of a limited monarchy, that is, a monarchy limited chiefly by the monarch himself, we are almost in a state of passive slavery*.—Our parliaments are called to give a sanction to what the ministry *pre-determine*.—A majority is purchased by the court, and we pay the purchase money.—Our property is sacrificed by our representatives, who having first deluded us to chuse them, vote it away to the ministry, that they may be the better paid their wages of iniquity; and these beggars, to speak of them in the general, are our legislators and framers of laws, which they break themselves, while they hold them severely over us.

* Vide fragment on government, page 101.

May God, and the undebauched spirit of freemen, however redeem us from such mortals, who priding themselves in the conquest they gain over us, by their vicious electioneering largesses, desert our true interest, and instead of deeming themselves, in a refin'd sense, our servants, take upon them the imperious characters of our lords and masters.—They corrupt us, that we may constitute them for corruption.—The court then attaches them to its schemes; taxes are multiplied, and our representative body is but a name preserved for the sake of appearances, while King and Lords rule us under a kind of aristocracy.—We are expelled and divided from government, and as the ingenious Voltaire indignantly tells us, once in *seven* years we are only free.

If, as a people, *sovereignty* is only *among us*, and not in our *parliaments*, which are of our own fabrication, it must be allowed that we are not to be restrained in our enquiries, into the conduct of those who undertake our public affairs, because (as in a private case between man and man) they are undoubtedly answerable for what they do; were it otherwise, and we are to be restrained in such enquiries, it would be argued, that having once constituted a frame of government,

ment, we have no right to complain of its administrators, though their deeds be ever so atrocious; in such a case, the state would run to progressive ruin, and we be left in completest slavery, when no new revolution, no new stand, against the effects of abrogated trust would restore us to our rights, unless founded on firmer principles than our *last*, which after all boast of glory on its occasion, was not sufficiently established for the purposes intended to be answered by it, one among which was, the total destruction of the Court of Star Chamber.—Our state vessel before that time was in a crazy and rotten condition.—It had a many leak holes, and though a great number of them were stopt by our revolution botchers, the few that were left purposely unrepaired, have exposed it to the perils it has since experienced; among those unrepaired defects we may (speaking metaphorically) class the practice of filing informations *ex officio*, which was left open for the benefit of the crown, whenever it should be expedient for the ministry to make use of such a practice, in revenge for being told their misdeeds, or being discovered in their private iniquities.

It is now an offence to remark on the proceedings of parliament and administration, tho

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we are all concerned in them; and so formidable are ministers become, that no punishments have been, or are severe enough against those who dare to speak the truth, and find fault when faults are flagrant, because we are told, that no private writer or speaker, should have liberty to attack the *sacred* men who take upon them the care of our state:—this is despotic, and history shews clearly the necessity, the virtue of every subject's having a watchful eye on the conduct of ministers and parliament, and of their not only being secured, but encouraged in alarming their fellow subjects on occasion of every attempt against public liberty, because private independent subjects are more likely to give faithful warning of such attempts than their betters, who, from their rank and fortune, and perhaps courtly connections, would rather conceal than detect the abuses of those in power: if private subjects are to be intimidated, in shewing their fidelity to their country, the principal security to liberty is taken away, and that such attempts have been made to this diabolical end, we have seen too plainly, in the cases of the King against Wilkes, Almon, Woodfall, and Bingley, but praise and thanks to those defendants we have found. Sir William De Grey's words, when Attorney General, verified,

that

that the power (wicked as it is) of that officer in prosecuting *ex officio* for libels, has never answered its purpose, which is to stop the pen and mouths, and stifle the complaints of an injured people (of which more hereafter).—Our minds and pens ought to be free, but not mischievous: to curb either is to abuse that liberty, which gives to our governors all their consequence; and to be cheated of a power, which transferred to worthless hands, is exerted to our misfortune and not our good.—It is like one man's building a house for another to occupy, while he is only permitted silently to look at the outside of it, or marrying a woman, for his enemy to enjoy.—The Ministry, and their friends the judges, pretend that in all crown prosecutions, for what *they* call a libel, which is any thing that upbraids the conduct of our government, whether *truly* or *falsely*, it is the dignity of the *public peace* they are meant to preserve, and punish the violation of.—They talk largely of libels raising sedition, insurrection, and breaking the peace; but where, in any one case in our time, do we find that these things have been proved?—They are pretended, but not given in evidence, and though, under those great and good men, Holt, Powell, and some other former judges, menti-

oned with reverence in the law books, it was held indispensably necessary to prove some *overt act* in the defendant, whereby the *public peace*, and the dignity of the King, as the chief conservator of it, was endangered, or *actually* broke, by what was charged as a libel; we have now Judges who dispense with such testimony as immaterial! but are Judges infallible? are they to supply the defects of such evidence? if they are, any thing displeasing to them, or to our governors, may be deemed a libel, and we be kept in the dark about a definition of what it is. The public peace is the peace of the *people*, and a breach of it is properly punishable; but it is folly to conclude, that because a King, or his Ministry, shall say that some one among the people has wrote a letter which *tends* to break such peace, without there be an act, proving beyond a doubt, and out of the reach of an inuendo, such *tendency*, that the thing complained of as a libel is really any more than *harmless* and *inoffensive*—If there be any one bold enough to say otherwise, he is a tyrant.

It is far from being the intent of these humble pages to raise sedition.—They contend not for an overthrow of our frame of government, but for a reformation in the conduct of its administrators.

ministrators.—Our constitution is an excellent one, if supported, but it has received many injuries from our legislators; notwithstanding we have a statute which says, no law shall be good which affects it, as established by Magna Charta.—Judge Blackstone amuses us by saying “wherever the law expresseth a distrust of an
 “abuse of power, it always refts a superior power in some other hands to correct it, the very
 “notion of which destroys the idea of sovereignty; and if the two houses of parliament,
 “or one of them, had a right to animadvert on the King, or the King had a right to animadvert on either of them, the legislature,
 “so subject to animadversion, would cease to be a part of the *supreme* power; the supposition of law he therefore says, is that neither
 “the King, nor either house of parliament, (collectively taken) is capable of doing any
 “wrong, since in such case, the law feels itself incapable of furnishing any adequate remedy; for which reasons, all oppressions which
 “may happen to spring from any one branch of the sovereign power, must necessarily
 “be out of the reach of any stated rule.”—This may sound very well in civil matters, but never in public or political ones. But then he says, “if ever they happen, the pru-

“ dence of future times must find new remedies
 “ on new emergencies, as was the case at the
 “ revolution;”—insinuating, if we had not such
 a remedy, we should not know how to proceed
 in such a case. Strange hesitation! since the
 remedy is inevitably to be found in the people,
 who would bring about any revolution when ne-
 cessity obliged it. But would the people, after
 what they have seen in the clandestine reserve of
 the doctrine of Informations *ex officio*, which has
 been employed in the most arbitrary manner
 since 1688, neglect to blot that doctrine away
 from the crown? It is a doctrine as scandalous
 to our constitution, as it is inimical to Magna
 Charta, which ordains that none shall be im-
 prisoned, condemned, or punished, but by his
 Peers.

When Sir William De Grey, that able man,
 was Attorney General, he confessed in the House
 of Commons, A. D. 1770, that his power of
 filing Informations *ex officio* was an odious one,
 and that it did not answer the purpose intended,
 for that he had not been able to bring any li-
 beller to justice; why? because there was no
 injustice done; or if there were, Informations
ex officio were not the proper processes to pur-
 sue.

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The lawyers and law books have differed in opinion about what is and what is not a libel ; yet the prevailing doctrine is, that *truth* is a libel, when it *tends* in its provocation or aggravation to a breach of the peace ; and that falsehood for the same reason is also a libel. We are taught too, that the person libelled, has no right to damage in a private case, if the charge laid against him be true, whereby it should seem that the truth of the thing would take away its criminality ; for if a man has no right to damage, he has no right to seek revenge ; therefore to libel a person for what he cannot affirm himself innocent of, is *no breach of the peace*. It may *tend* to provoke a breach of the peace ; but will that make truth a crime ? If it will, it is wonderful that prosecutions for libels are not much more common, as any thing that tends to provoke anger, or to excite shame or reformation, may, under these rules, be punished as libellous.

In a civil sense, a malicious defamation of any person may be properly libellous, as in a settled state of government the defamer ought to complain of any injury done him in the ordinary course of law, and not to revenge himself by becoming Judge, Jury, and executioner, in his
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own cause; but in a *criminal* sense, it is otherwise; and there can be no prosecution for a libel *criminally*, but for a breach of the peace, or a *tendency* proved towards it. Judges Holt, Hale, and Powel, knew this to be true. They had no corrupt attachments to administration, and they made it their duty honestly to expound, and not partially vitiate the law in cases of libel. Let us here see what after Judges have done on this important (though ill understood) subject.

And first, after describing imperfectly the signification of a libel, the learned and elegant Blackstone proceeds to tell us, that the *tendency* of all libels is the breach of the peace, by stirring up the objects of them to revenge, and, perhaps, bloodshed. These are his words:

“ For the same reason it is immaterial with respect to the essence of a libel, whether
 “ the matter of it be true or false, since
 “ the *provocation*, and not the *falsity*, is the
 “ thing to be punished criminally, though
 “ doubtless the *falsehood* of it may aggravate
 “ its *guilt*, and enhance its punishment. In a
 “ civil action, a libel must appear to be *false*
 “ as well as *scandalous*; for if the charge be
 “ true, there can be no private injury, (nor of course

course any public one, because in civil actions no breach of the peace is suggested) " nor any ground to demand compensation, " whatever offence it may be against the public " peace ; and therefore, in a civil action, the " truth of the accusation may be pleaded in bar " of the suit (and why not to a criminal charge where the peace does not appear to be broke)? " But in a criminal prosecution, the tendency " (curse on this word) which all libels have to " create animosity, and disturb the public " peace, is the *sole consideration of the law*; and " therefore, in such prosecution, the only " points to be considered are, first, the making the book or writing ; second, whether " the matter be *criminal*; and if both these " points are against the defendant, the offence " against the public is complete."—True, if the matter be *criminal*; but the learned Judge says nothing how this *tendency*, in all libels, to disturb the public peace, is to be made out or known ; therefore he leaves us to suppose, that it is to be done by construction only ; very indeterminate indeed, as is the meaning of the word libel at all. In fact and reason, a libel is a *non entity* ; that is to say, there is no such offence as Scandal ; for if the remorse of scandal was removed ; or in better words, if scandal

dal occasioned no remorse, it would be in no sense an evil, because no body would regard scandal that did not deserve it. We believe every character what we know it to be ; and if people lived, so that no body would believe their upbraidings, scandal would die away, and we should forget the name ; but we find that the most worthless are generally the most tenacious of what they do not deserve, which is a good name and character. Satan corrected sin, and quoted scripture. The devils of this world always personate saints, because the wicked benefit by concealing their vices, and not by an open shew of them ; therefore it is from the vilest of people, that we behold rage and revenge against those who, despising their conduct, and dreading the consequences, candidly call them to account for it. The leading men at present, and for the principal part of this reign, seem in this predicament. They have been conscious of their deserts, while striving to rule triumphant over the people, whom they have miserably corrupted and deluded into mischief ; and when a lover of his country and fellow subjects has engaged to speak loud truths which reflect deceit and perfidy on them, he is pursued with implacable fury. Even records, those things, the alteration

teration of which by judges, is punishable by statute, have been erased to gratify that fury previous to trial.—Juries have been deprived of their authority, and a corrupt court has punished a man as a libeller without any proof that *he had broke the public peace*, except by *inuendo* and *implication*.

But to return to the worthy Blackstone on libels: if we depend upon what he says, which, to a superficial reader, seems reasonable, it is very plain, that the *tendency* of all libels, being, as he says, the *sole consideration of the law*, the prevailing doctrine is right, and juries are then only to try the making or publishing the thing charged as a libel by the Attorney General. If this be allowed, which in justice it never can, the *sole consideration of the law* becomes no consideration whatever, for in law the supposed libel must be criminal.—If criminal, *i. e.* if it has broke the *public peace*, the law is to judge of it, and not the Jury; now what the law has to do *solely* with that, is difficult to comprehend.—*A breach of the peace* if committed, one would imagine was more properly the *consideration of the Jury* than the law, and is a matter as much at issue to be tried by them as that the supposed libel was wrote or published.—The advantage
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of a Jury is otherwise lost, and by leaving the tendency of what the supposed libeller has done to break the peace, *solely to the law*, they seem not to discharge their duty according to their oaths, which are that they shall *well and truly try the issue, joined between our Sovereign Lord the King and the Defendant, and a true verdict give according to the evidence.* Suppose then, that any of us should be brought to trial, for having wrote, that a proclamation had been made without the concurrence of Lords and Commons, and that what had been so wrote, was seditious and against the peace, to which Not Guilty was pleaded; would the Jury not be bound by oath to try the whole of such charges? would they not be obliged to try, whether there were malice, falsehood, or a breach of the peace, or an *overt act* toward it?—If they would be, the law usurps a power to be wantonly exerted in cases of public libel, at the *discretion* of Judges, to the injury of innocence, and a man under such circumstances would be at their mercy for writing any paper whatever, if the same were offensive to administration.—He would then be convicted of a *Guilt* by his *Judge*, which his *Jury* would be told they have nought *to do with*. According to this principle, an Attorney General has nothing to do but determine
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that a particular man shall be punished for what he thinks proper to deem libellous in him; and on bringing him before his judge and jury to say, " my Lord and Gentlemen, I " charge the defendant with having wrote and " published an impudent, wicked, and sediti- " ous libel, in saying" such and such things as the nature of the case may be, and then, on proving what the defendant is ready to *confess*, that he wrote and published such words, to entitle him to a verdict, which when he is possessed of, is not to be set aside or judgment arrested thereon; because the *tendency*, (without any proof of the fact) of such words, in the sole consideration of the law, was to break the public peace.—Would this be justice? most certainly not, for whatever a criminal is charged with, ought to be proved by *positive evidence*.—It is cruelty to punish any man for imaginary or constructive faults.—In a civilized, and particularly a free state, all crimes are *positive*, and even murder is not murder, unless there be positive evidence of an *intention* to kill. Can that be law therefore that robs a man of his liberty, for having done nothing but in *constructive tendency* that is criminal, or morally reprehensible? as well might he be punished for a want of charity, or benevolence to his neigh-

bour, which seems a greater *omission* than the other a *commission*, because society is a loser in the one, but an Attorney General reaps no advantage in the other, except by gratifying his employers, in return for some secret sting, their conscience had separately afforded.

A criminal prosecution can only be had for a *crime*, and therefore the publishing of what is either *true* or *false*, which does not *actually break the peace* is no *crime* at all. It is the publication of what is *false, scandalous, and seditious* that is a *crime*, and solely gives jurisdiction to the criminal court, and these things must of necessity be left to a Jury, who by their oaths, are obliged to try whether the supposed libel is *true* or *false, malicious* or *seditious*, which they are to collect from circumstances, as much so, as whether a trespass is wilful or not, or the killing a man with malice prepense, or whether any act was done or words spoken, with a *criminal* or *injurious* intent.—The truth of a thing may not defend it from being a libel, which *actually* causes a breach of the peace.—It may be otherwise by an *inflammatory falsehood*, for as falsehood is a *crime*, it may, in particular cases, *tend* to a breach of the peace, where the King is *solely* concerned; but in those crown prosecutions,

ons, where *no breach of the peace is proved*, nor enquiry made into the *truth or falsity* of the supposed libel, it must be considered harmless and constitutionally inoffensive; nor can it be otherwise, except in the opinion of those our mal-administrators, who break loose on the liberty of the subject, when their bad conduct is exposed. It is in that the *crime* of libel is to be found.—It is not the *public peace*, but the *private peace*, of the Ministry that libels *tend* to break.—It is the security of the subject in publishing, who, and what are enemies to his welfare, and not setting one subject on another, that constitutes the crime of libels, in the opinion of the law, and a time-serving Attorney General, who, striving to obtain a share in the public plunder, is ripe to oblige those who are at the head of it, by filing his information *ex officio*, against any man that offends them, right or wrong. The Ministry know the use of such a character well. His power, by these informations, are as serviceable to them, as *Lettres de catchet* to a French court, as is very evident from a motion made in the House of Commons in 1766, but in vain for abolishing informations *ex officio*, as oppressive to the subject, because the Attorney General who files them, cannot be called to account

account for the damages suffered by innocent people informed against by them.

We are told in the law books, that there are two kinds of informations: first, for offences immediately against the King, filed *ex officio*, by the Attorney General.—Second, for enormous misdemeanours, between subject and subject, in the name of the King, filed by his coroner, or master of the crown office, in both which, says Sir William Blackstone,—“there
 “ can be no doubt but this mode of prosecution by information, filed by the Attorney
 “ General, or the King’s coroner, is as antient
 “ as the common law itself, (by what authority does he so boldly say this?) for as the King
 “ was bound to prosecute, or at least lend his
 “ name to a prosecutor, whenever a grand
 “ Jury informed him, upon their oaths, that
 “ there was sufficient ground for instituting a
 “ criminal suit, so when these his immediate
 “ officers, (meaning the Attorney General and
 “ King’s coroner) were otherwise *sufficiently*
 “ *assured* (how was that to be done?) that a
 “ man had committed a gross misdemeanour, either personally against the King, or his government, or against the *public* peace and
 “ good order, (pray observe this) they were
 “ at

“ at liberty, without waiting for any further
 “ *intelligence* (what further intelligence can be
 “ necessary after *sufficient assurance*?) to convey
 “ that information to the court of King’s bench
 “ by suggestion upon the roll.”—So that in the
 first case, the Attorney General is of himself a
grand Jury, and in the second, the King’s co-
 roner is *another*, in all matters not capital,
 wherein it is agreed they are not a grand Jury.
 What surprising reasoning is this?—

Upon the dissolution of the Star Chamber
 Court, wherein the doctrine of information at
 large was practised, with infamy and disgrace
 to the crown, and to the oppression of its sub-
 jects, the Court of King’s Bench revived the
 same doctrine, or rather assumed it, as the pre-
 tended *custos morum* of the nation, for the sake
 of peace and good order of government; but
 Sir Mathew Hale, who presided in that court,
 is said to have been no friend to this mode of
 prosecution, because he knew the ill use that
 had been made of it, “ by permitting the
 “ subject to be harrassed, by vexatious infor-
 “ mations, whenever applied for by revengeful
 “ prosecutors;” yet this same mode prevailed
 even after that glorious act of Ch. I. s. 10.
 which entirely destroyed the Star Chamber
 Court,

Court, and until the 4th & 5th W. & M. f. 18. when to soften the public complaints of its oppression, it was enacted that the King's coroner (who we have before seen acted as *grand Jury*) should not file any information, without express direction from the Court of King's Bench, and that every prosecutor permitted to inform, should enter into a recognizance of 20 *l.* to prosecute his suit with effect, and pay costs to the defendant, in case he be acquitted, unless the Judge who shall try the information shall certify there was sufficient cause for filing it; but notwithstanding this insufficient act, occasioned and procured (by a struggle against the ill use of *all informations*, before the revolution) soon after the accession of King William, the Attorney General was left still with his power, as a *grand Jury*, in all cases at the King's suit *singly*, which has been subject matter of complaint ever since, because it has no other authority than long practice, and is contrary to the spirit of our constitution and Magna Charta.

It is no honour to Judge Blackstone, that he so ingeniously defends this power, by saying, that an Attorney General is at liberty, when
sufficiently

sufficiently assured of a gross misdemeanor, to suggest it on record in the *King's* name, without waiting for further information (meaning the information of a grand Jury) because a *sufficient assurance* is positive, but with due submission to the Judge, *sufficient assurance* when determined by *one man without oath or evidence*, is no assurance in the least; and Sir Mathew Hale was rather of this way of thinking than what the Judge attributes to him.—In his pleas of the crown, Vol. 2. f. 8. he observes, that the most regular and safe way, and consonant with Magna Charta, is to prosecute criminal cases by indictment, or the presentment of twelve men *sworn*; and though he says crimes below capital *may* be prosecuted by information, he gives no other authority than *long practice* for it.—Judge Blackstone goes something further, and refers to 2 Haw. P. C. 260—This is what he says in justification of informations *ex officio* — “As to those offences in which informations were allowed as well as indictments, “so long as they were confined to this high “and respectable jurisdiction, were and carried “on in a *legal and regular* course in his Majesty’s “Court of King’s Bench, the subject had no “reason to complain.” We are here much embarrassed with the words *legal and regular*

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course.—Certainly a subject has no reason to complain of what is legal and regular; it is what is *illegal* and *oppressive* that is complained of in the mode of prosecuting by informations *ex officio*, such as leaving the subject in the power of *one* man, (the Attorney General) who is considered as a *grand jury* on a criminal act, (not capital) suggested against that subject, and leaving him also remediless and half ruined, by the expence of his traverse, though he should be acquitted of the charge, or prevented in a trial by a *nolle prosequi*.—The elegant Judge Blackstone will not easily answer these things, neither is there any substantial answer, consistent with the force of our laws, to be given in support of filing informations *ex officio*.—We have seen that designing tyrannical lawyers have been very astute in their endeavours to justify them by long practice, and as necessary for the safety and very existence of our executive magistrate, (the King); but whatever may be said of their being reserved in the *great plan of our constitution*, 'tis almost as clear as any demonstration in Euclid, if we can depend on our eyes and ears, that their grand use and convenience is to harass the subject when he becomes troublesome to the court, or when he upbraids a ministry for bad measures; notwithstanding Judge
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Blackstone says again, that there is the *same* notice, the *same* process, the *same* pleas, the *same* trial, and the *same* judgment, by the *same* Judges, as if, instead of informations *ex officio*, the subjects of them had been prosecuted by indictments.—If we admit the major of this assertion and deny the minor of it, we do Sir William great justice; for as informations *ex officio*, are filed for libels chiefly, on King or government, the jury summoned to try them, by being told they are only to try the *fact*, and not the *crime*, charged in them, the trial is *not the same* as in other cases, where a grand Jury sits deposed on both, in the *first instance*, and a *petit Jury* determines on both at nisi prius, or trial finally; therefore, it being adjudged that the crime of libels is the *sole consideration of the law*, the Attorney General determines the law in his favour, before he files his information *ex officio*, and his discretionary determination is what Judge Blackstone would persuade us to be a *sufficient assurance* of a gross misdemeanor; sufficiently so, to render informations *ex officio* absolutely necessary and right.—But suppose we indulge the worthy Blackstone and give way to him, in his saying that there is the *same* notice, and the *same* proceeding, under informations *ex officio*, as indictments which he

mentions, purely with a design to prove them inoffensive; will it then be pretended, that for the reasons he has given, they are preferable or more constitutional than presentments or indictments?—He must either prove they are so, which he has not ventured to do, or we must despise his inference; for if informations *ex officio* are no more or less than presentments or indictments, and the proceedings are as he asserts, surely it is impolitic and absurd, either in him; or the superior criminal court, to give them the preference and retain their practice, particularly, as a destruction of them would, in this mode of reasoning, do no harm to justice, but would abate all publick lamour against them. It is unfortunate that Judge Blackstone should have plunged himself into such kind of logic, which, while he intended to apply it in support of informations *ex officio*, inevitably destroys his purpose, and exposes the weakness of his argument, in favor of what, in spite of himself, is not to be justified; and however he may think informations *ex officio* necessary and right, either in his own opinion, which from *his* reasons, is no opinion at all, or under the influence or superintendence of a second person, we see this subject in a very different point of view; and recollecting the pains taken by a Judge, in concert

concert with an Attorney General to convict Mr. Wilkes of a libel, at the price of altering a record before trial, and by a peculiar direction from the bench to the Jury, on that occasion, we cannot help thinking that Juries in such cases are only impannell'd to try what perhaps would not be denied, and which might not be criminal; and that the Judge and King's Attorney, having as *grand Jury* pre-determined the crime of what a defendant is charged with writing, without *oath*, on the *self-sufficient assurance* of its being a gross misdemeanor, the Jury are only by their *half verdict* (or rather no verdict) to give a sanction (*true* authority it cannot) to the judgment of the Court of King's Bench, for what they never meant or intended, when they said *guilty*.

If from these premises it appears reasonable that *fact and crime* are inseparable, before a Jury, which to all intents and purposes they seem to be, except where some point of law is necessarily left to the Judges for the satisfaction of the Jury, and the safety of the delinquent, they have an absolute right to consider them, otherwise they may leave the law to work injustice in the *sole consideration of a constructive crime*, founded in nothing but *tendency*, which no man ever understood as a *crime*, except from
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some *false* and *inflammatory* action not morally justified.

In the year 1681, many printers were *indicted* for scandalous and seditious libels.—The Jury returned the bills against them *ignoramus*, because their writings did not appear to them malicious or seditious.—Happy and honourable would it be for us and our country, were an Attorney General obliged to submit his charges to a grand Jury in the first instance, and that their *criminality* should be on a tryal fairly and honestly considered, by a petit Jury.—We should not then hear of verdicts, guilty of *printing and publishing only*, or guilty of what has no guilt in it, which has been done in the present reign by a special Jury.—Had that Jury who found the *printing and publishing only*, been in their senses, or apprised that their finding the printing and publishing the thing in question was *no crime*, they would have pronounced the defendant *not guilty*.—A man must be guilty of something before convicted; and printing and publishing a thing, unless that thing be *criminal*, is *guilt-less*.—It is plain that, that Jury found nothing criminal, otherwise they would not have given a verdict of *printing and publishing only*;
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if they had seen any thing *criminal*, they certainly would have said *guilty*.

Probably we may be told, in answer to these arguments, if they deserve that name, that the criminal court is guardian to every criminal defendant, who, if he supposes himself aggrieved by a verdict against him, may apply to that court with his objections to arrest judgment thereon.—He *may* do this, but what precedents have we to shew whereby a defendant has succeeded in such application? We have experienced, that when an Attorney General is in possession of a verdict, the *criminal court* will not set it aside; it will rather prevent a cause of error, or objection to the proceedings, than assist a defendant to avail himself of either; and as to the law, there is no difficulty to make that constitute any verdict good for a *libel*, from the *tendency*, as we have seen before, there is in either *truth* or *falsehood* to break the peace. The verdict, when recorded, speaks a very different language to what the jury thought of or could mean.—It does not say that the defendant, for example, printed and published such a writing *only*, but that he wrote it *maliciously*, or with intent to raise *sedition*, to *scandalize government*, and against the peace of the King, his crown and dignity; all
which

which the jury never had *evidence* of, and could not find or intend, therefore, by not considering what we hear, is only the *consideration of the law*; they in reality considered nothing, but left the law to do an injury, in the distortion of it by ministerial Judges.

It may be said, that by leaving the *crime* as well as *fact* to a Jury, a guilty defendant may escape punishment as a libeller, and he cannot be tried a second time on the same charge:—Granted; and much better so than innocence should be fettered, which ninety nine times in a hundred it now is.—Many capital criminals escape punishment, because their Juries, who judge of their *crimes* in what they are charged with, which is the *fact*, have not sufficient evidence to convict them upon.—Is a supposed libeller to be put on the same condition as a felon? what would any man think, if he heard a Judge tell a Jury at the Old Bailey Sessions House, that they were to judge of nothing but matter of fact, committed by a prisoner, and leave the crime contained in that fact to him? It is of the highest import to the subject, that Juries should determine on *both*, because public libels, and prosecutions for them, by informations *ex officio*, arise from disputes between the ministry and the people, the former for forgetting

getting the power that made them, the latter, very naturally complaining that their trustees either neglect their real interests, or make an impious use of their delegation.

Since parliaments have been corrupt, (which they have progressively been for a century and a half) and public affairs mal-administered, the severities consequential to the exertion of the Attorney General's power, have been useful, and it was no doubt foreseen, when parliament passed the statute 4th & 5th W. & M. c. 18. that such inquisitorial power would be serviceable, so long as an universal corruption and mal-administration should prevail; for which reason it was reserved, not in the *great plan of the English constitution*, according to Judge Blackstone, but *concealed*, designedly, like the stiletto under the cloak of fraud and tyranny, to be used when a more honourable weapon would be *openly* ineffectual.—Were parliaments and ministers to be incorrupt, those who speak and write freely of their conduct, would be self-restrained, and the people left at large to remark as they pleased, on the procedure of those who undertake the management of their affairs; but while ministers have schemes of iniquity to carry on, it is not to be wondered at, that they strive

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by every severity, to drive away those who come with prying eyes, to enquire into, or condemn their behaviour, as calculated eventually, only for their own selfish and ambitious purposes, and not for that common utility, which is the cement of civil and political society, under a free and well regulated state.

Having thus taken a general survey of the cause of our public abuses, and looked into the nature and mode of libels, and prosecutions for them by information *ex officio*, and descanted upon their pernicious effects among a free people, we come now to the case of our fellow subject, Mr. Horne, who is in confinement for a public libel, in having advertised a subscription, for the benefit of the widows and children of those men, who preferring death to slavery in America, were slain by the King's troops.—This was deemed *criminal*, because it *tended* to break the peace, and interrupt the quiet and *harmonious* course of government, which had determined to tax unconstitutionally our brethren in America.—Our ministers levelled their artillery (the Attorney General) at Mr. Horne, as the author of this maudit advertisement.—He has been found guilty as a libeller for it, and is now in misericordia,

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But if after all our reasoning on the subject of libels, *guilt implies a crime*, that *crime* must contain an *injury*, as there can be no injury without a crime.—To punish a man who has committed no injury, is illegal and abusive, of moral, natural, and revealed right, and the more so, when he is punished without the original authority of his peers.—Has Mr. Horne broke the peace, raised sedition, insurrection, or promoted public animosities by what he advertised?—Were there any *evidence of these things on his trial*? No. He had affronted a corrupt and obstinate ministry, in saying publicly that the King's troops had slaughtered some Americans, which, those who read Lieutenant Gould's attestation on the occasion, will best determine the truth of; particularly when they come to that part of it, which says, the King's troops rushed on the Americans, (previous to any firing) shouting, huzzaing, and at last discharging their balls at them, (as if they gloried in what they were about.)—Had Mr. Horne said those *unhappy, deluded* men, who in contempt of *unconditional submission*, to a power that had despised and abused them, and who resisting like that *fellow* Hampden, the lawful sovereign's demand, of an unlawful tax from them, unfortunately

nately fell in defence of *themselves and property*, perhaps the ministry would not have regarded it, but in all probability they would have rewarded him rather for his silence on such a black day's work, when justice and humanity were eclipsed, than have thought of punishing him by a prosecution on an information *ex officio*, and a tryal thereon, in which success was insured against him from the principles already deduced.

There is no act of parliament which describes a libel, or ordains that in its nature it *tends* to break the peace, neither does Magna Charta take any notice of a libel; yet the learned Blackstone says that informations *ex officio*, are as old as the common law, therefore, until Juries shall know their duty in the tryal of one, we must expect to see them imposed upon, and the subject innocently suffer; for there is no necessity that a *tendency* to break the peace should not be examined into by a Jury, because from what we have observed and concluded, the law which seems to claim the *sole consideration of it*, is uncertain and indecisive on the subject.—It is very extraordinary that the word *tendency* should be so much abused as we find it to be by Judges and Attorneys General,—in itself
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it means *intention* or *inclination* ; but by what means, or how is that intention or inclination, whether it be to do a good thing or a bad one, to be known ? An intention may be surmised, as was the case with Cain, who after the slaughter of his brother Abel surmised from a conscious desert that who so found him would slay him ; but his surmising thus, proceeded from conscience, and from no intention that he should be slain for what he had done ; an intention or inclination to do a thing must be either positively known or not known at all ; they have no medium but in construction, which is nothing.—How then are they to be discovered ? only by some *open deed* preparatory to the execution of what is *intended* to be done, or *inclined* towards, and not by surmise, which according to the ingenious invention of some men, would find intention or inclination to do a bad thing in any of us, as best suited their spleen or caprice.—Hence tendency has a positive meaning, and must be positively proved by some open deed towards committing a crime. But if tendency thus proved is criminal, it is every way necessary we should next enquire how far the punishment of that tendency to commit a crime, without a perpetration of it, is to be equal to the punishment for a crime really and truly *perpetrated*.

perpetrated.—If there be any difference between an actual breach of the peace and a tendency towards it, it should seem, if both are punishable, after positive proof, that there should be a different punishment for them, as both would otherwise be equally criminal and punished alike.—We cannot reconcile ourselves to this in any manner, notwithstanding we have experienced that several punishments have been inflicted, not only in cases where *no* breach of the peace has been proved, but where even a tendency towards it has only been *surmised*; therefore the word tendency is undoubtedly abused by the *law's sole consideration*; the very thing in all libels that gives jurisdiction to the criminal court, which is an *actual breach of the peace* is paid no regard to, and we are (as things now fallaciously and wickedly go) subject to punishment for crimes we do not commit either in fact or tendency.

It may here be asked, whether we should be more secure were Juries to determine *crime* and *fact* together? and whether Juries would not as often convict on *both* from the *ingenious* direction of a Judge, as they would do on *fact singly*? The questions are nice, but we answer, that were Juries to exert such a right, they would do justice to themselves, even though an Attorney General might succeed by
means.

means of a Judge's lulling an interested or partial special Jury (composed of contractors or time-serving men) on his side, to pronounce that fallacious word guilty; yet it is to be hoped that the greater number of Juries would be independent, and not determine a fact criminal not *malum in se*.

It requires recollection to be consistent.—Truth is uniform, but the learned Blackstone (whether from design or otherwise we will not say) is a little perplexing, in explaining a Jury's duty in trying a public libel.—In book III. cap. xxiii, page 380, on trial by Jury, after speaking in very high praise of the advantages of such mode of trial, which he says, “ever will
“be looked on as the glory of the English
“law;” and again, that, “if the impartial
“administration of justice be entrusted to the
“magistracy, their decisions, in spite of
“their own natural integrity, will have frequently an involuntary bias;” he proceeds to tell us, that “in settling and adjusting a *matter of fact*, when entrusted to a single magistrate, partiality and injustice have an ample
“field to range in, either by boldly asserting
“that to be proved which is not so, or more artfully, by suppressing some circumstances,
“stretching

"stretching and warping others, and distorting away the remainder."—The learned Judge is no where more reasonable in all his view of the English laws, yet if he is sincere in this part of his commentaries, when commenting at large on trial by Jury, why does he, in cases of *public libel*, leave the crime to the judgment of this very *single magistrate*, and leave a Jury to try nothing? If trial by Jury is that *glory* he says it is, why does he extol it on one hand, with all possible propriety, and on the other, explain it to be little more than mockery? Why is not trial by Jury the same in *all* criminal cases as in civil? And why is a *single magistrate* to risk "his natural integrity," in a field of partiality and injustice, in the former cases, and not the latter? The answers are clear; because, in the former (keeping our minds particularly on libels) the Crown having the apparent illegal power of prosecuting the authors of them by information *ex officio*; and because they are offences against the delicacy of the court, Juries shall be called ultimately for form sake only, while in the latter case, justice shall constitutionally take her course; and therefore, when speaking of trial by Jury in civil cases, the Judge very sensibly says, "Here then a competent number
 "of sensible and upright Jurymen, chosen by
 "lot

“ lot, among those of the middle rank, will be
 “ found the best investigators of truth, and the
 “ surest guardians of public justice.”

If Juries are the best investigators of truth, and the surest guardians of public Justice, there can be no reason given why they are not so in all cases whatever, except what we have by this time exploded, as nugatory and despotic, even under the definition of Sir William Blackstone.

But let us see how the Jury acted in regard to Mr. Horne.—When he had expatiated in defence of the charge brought against him by the Attorney General, and had proved that what he had done, was not criminal in itself, and could only be so in the construction of his prosecutor, a meer creature of the court and ministry; the noble Judge in his charge to the Jury, (prefac'd by telling them there never was a clearer case) said, that the offence was compleatly made out, because he had confessed himself the author of the supposed libel, and therefore that the Jury must convict him on the *clearest evidence*.—The Jury took the hint, swallowed the bait, and did as they were directed, in finding him guilty;—but of what? Not only of what he had confessed, but contrary,

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perhaps, to what they thought, (unless they were slaves and friends to the ministry, of the *crime of sedition and malice*, against the King and his government, *tending* to break the peace, and so was their verdict recorded; Mr. Horne moved in arrest of judgment, not within the *quarto die post*, after the return of the *disfringus juratores*, but on the day he was called up for judgment; his objections were to the charge, which his Jury had either ignorantly, or partially found him guilty of, because that charge was vague and uncertain.—Remark the genius of the King's court to be as we have suggested.—After the court had taken time to advise, *curia advisare vult*, his objections were found *immaterial*, because they were *supplied in evidence*, which was despising the maxim that, *beau pleader is the very heart string of the law*, and was as much as to say, that if he had been charged with a rape on a Judge's wife, who, instead of giving all the necessary evidence to convict him of it, proved that he had robbed her; and from which evidence of the latter, though no charge was made against him of it, he should be punished, and his objections to the indictment, for not *charging* him with what *evidence constituted*, should be deemed immaterial.—Wonderfully casuistical judgment was pronounced, and Mr. Horne

is in confinement for having affronted the ministry, and not for having either *broke the peace* or even *alarmed it*, or *injured any one*, and for *not having done this*, *security is demanded of him for his keeping it for three years*.—O law where is thy spirit? Oh, ye Judges where is your integrity?

Mr Horne informed the Court of King's Bench, that he was brought there for judgment, more in consequence of his Judge's direction to his Jury than of their full deliberation of the fact and crime laid to his charge, the truth whereof we may now very easily discover, not only from our examination into the right of tryal by Jury, but from the desultory discussions of Judge Blackstone himself, against whose errors the author of the fragment on government properly warns the admiring student, by recommending him to place more confidence in his own strength and less in the infallibility of great names; for whosoever reads the celebrated commentaries with attention and without taking all to be found therein for granted, will in all probability conclude, that *all is not gold that glistens*. In regard to law and fact, the Judge separates them in a criminal sense, and consolidates them in a civil one.—This he does when

he treats of particulars, but in his essay on the study of the law §. 1. where he speaks generally, after saying that all gentlemen are liable to serve on Juries, and that therefore, they should have a general knowledge of the laws of their country, he says, " In this situation they have frequently a *right* to decide on their oaths, questions of nice importance, in the solution of which some *legal* skill is requisite, especially as the *law* and the *fact* are intimately blended together.—And the general incapacities of our best Juries to do this with any tolerable propriety, has greatly debased their authority, and has unavoidably thrown more power into the hands of the Judges to direct, controul, and even reverse their verdicts, than perhaps the constitution intended."

Here we find the learned Judge contending, that Juries are liable to decide questions of importance,—of law and fact,—as a matter of right, and constitutionally so, which right their incapacity has suffered to be invaded by Judges.—We discern something like sense in this, but we do not find the same consistency of thought prevail in every page of this author's work, particularly in those which inform us that law and fact, which is fact and crime, (*ut infra*.)

infra,) is not for the capacity of a Jury to try, as intimately blended together, in criminal cases, but only in civil ones; from whence, and according to Sir Mathew Hale, Judges would have a partial field to range in, and trial by Jury would be useless; which, as in the case of Mr. Horne, and others, has been too fatally the mode.

The cause, however, of Mr. Horne, is the cause of the public.—The people suffer in him, he is imprisoned and fined, to intimidate others from complaining of our public abuses, under those governors, who, tender and delicate in their ruinous conduct, fall on their opposers with merciless rapacity.

It is a maxim in our law, that every man criminally charged, is presumed innocent till convicted, and shall be prosecuted with mildness and care.—Was Mr. Horne presumed innocent before conviction, and prosecuted with gentleness and charity? No. He was convicted before trial by his *grand Jury*, (the Attorney General) who knowing the stretch of the law's *sole consideration*, was *sufficiently assured* (in Judge Blackstone's words) that it would justify his conviction of Mr. Horne, as a kind of petit Jury,

Jury, after twelve *cyphers* of special men had found that *black* was not *white*.—There was as little mildness and charity in Mr. Horne's prosecutor (the Attorney General) as in his proceedings. He was vindictive on the trial, and malicious in the Court of King's Bench, when Mr. Horne awaited its judgment against him. It may be wrong to blame nature, and therefore, if malice and illiberality are characteristic of this Attorney General, we have only to regret, as his friends, that education and experience have not thrown a veil over those qualities, in an officer, whom elegance and politeness would render important and respectable; but it is very remarkable, that whatever may be the real man, in a council, without a silk gown and without the bar, we find him in a smooth robe, and in office, treading the usual track,—a coarse, vulgar, and austere blusterer.—We may remember very well, that the Attorney General, Norton, in Mr. Wilkes's case, said, that had it been adjudged to have *excited*, instead of tending to excite, an insurrection, it would have been no less a crime against the state than *high treason*.—The Attorney General, Thurlow, repeated nearly the same words, when Mr. Horne was called up to judgment, with this variance.—The former spoke

spoke *doubtfully*, the latter *positively*, that he could hardly distinguish Mr. Horne's offence from high treason!—Was this hopeful speech in the hour of judgment, charitable or mild?—Or what was the learned speaker pursuing? An aggravation of punishment! for which reason, as it was not in his power to effect it, the judges always agreeing in their sentence before they call the convict to hear it, we can only say, that it strongly marked the man, who agitated by Mr. Horne's defence, discovered the fallibility of human nature, in the overflowings of his wrath.

How the idea of high treason could enter into the subtle brain of either Norton, in Mr. Wilkes's case, or Thurlow in Mr. Horne's, is marvellous, as no law logic, ever yet proved libel and high treason to be convertible terms. They are opposite and distinct offences.—One by construction, is a breach of the peace, if libel be an offence,—the other, the highest of all capital offences.—Any Attorney General, who will tell us otherwise, is an impostor; he would make truth treason, and all the freeholders of Britain, riotous traitors; and yet, such is our situation, that we must put up with all this—see English liberty insulted, and our constitution

tion invaded, by the injurious *reserved power* of an Attorney General, and the misapplication of the law to sanctify it by *meer construction*.—Let us then supplicate the genius of England, her tutelur saint, to pervade the minds of her sons, and to accelerate the happy period when Parliament will be less venal and corrupt, and better disposed to abolish such extraneous powers of an Attorney General, than in 1766, when a motion for that end was rejected by the commons, and that a libel may be defined by the law to be some *positive* crime and not a *constructed* one.—The law will then not be able to make *tendency* to evil a *crime*, and the subject will have less reason to complain:

If there be any love of liberty left among us it will be criminal in us to be indifferent about the welfare of our country.—Mr. Locke says, no people can alienate their posterity's immunities; and whoever can be unconcerned about the liberty and happiness of the community of many millions of his fellow creatures, connected to him by the endearing ties of nature, must be unfeeling, sordid, selfish, and harden'd against all natural affection, and incapable of every generous or tender attachment.

Our condition, as we have seen in the preceding pages, is very calamitous.—We are subject to punishment for speaking and publishing the truth, because truths are galling things to those who betray their trust, and who when found disgusting to us, instead of quitting their lucrative places, apply to an Attorney General to punish us for complaining.—What in the whole world can tend more to slavery?—Indeed it is a specie of slavery in itself. We are liable to be punished by our servants for finding fault with them; and *truth*, that sacred repository of all that is good, is an aggravation of our supposed crime.—Our fellow subject Mr. Horne, is said, to have offended the King and his Ministers, by praying a contribution for the widows of those Americans who were killed by *his* troops.—The King can do no wrong, as doing nothing of himself.—The army is termed his troops, but if any part of it discharge their bullets, or sheath their swords in the bowels of their brethren, when no rebellion constitutionally exists, or war is declared, is it the fault of the King? It is not, and speaking of our present, (whom God preserve) there is no one but must adore him for his humanity, and those cardinal virtues which give grace to human nature and glory to our great Creator.—It is not to him

H

nor

nor his troops Mr. Horne alluded.—It was to *that ministry*, and the unhappy command of some of our ministerial generals, who fatally employ a part of our military in *America*, by whose hostility, those widows were left husbandless, for whom, and their families, Mr. Horne advertised relief, and for which, whatever the creatures of the court may say, or think to the contrary, he has been treated as a slave, not as a freeman.

To those who can reconcile themselves to the idea, that human beings are to be no more regretted in their destruction than sheep, we can have little to offer.—It may be a weakness in our nature to be of an opposite opinion, but never a crime.—The tree is known by its fruit, and whoever reads this address to the independent and humane part of our community, will believe the author of it (if not a Cromwell, a Richard the III, or a Caligula) to be a man, who (though wrong in any part of his conclusions to be found herein) cannot observe with indifference, any thing whereby his fellow subjects may be affected in the enjoyment of those bounties, which under God they have a right to possess, without invasion.—Though our corruption, and natural disposition to sin, is not
averted

averted by providence, in the slaughter of each other for reasons beyond the ken of human conception, it is difficult to comprehend the antithesis, that population is necessary in one sense, for the welfare of all states; and in the other, that a hostile destruction of the people is justifiable.—Yet such is the history of all sublunary affairs, that when Kings possess more territory than they know how to govern, they grow ambitious, and quarrelsome, and instead of appealing to a neutral power, morally to adjust their disputes, they settle them wantonly in the blood of their subjects.—To reason by analogy, they say, is not to reason at all, and those who plead scriptural facts, and tell us, “ whatever is, is “ right,” ought to be left to the enjoyment of their own thoughts; and to comport themselves in their plunders and iniquities, for which such pleading will always find excuse, and countenance the foulest actions; but who, among us, that is formed in humanity’s softer mould, can hear of a man’s being eat in one country, and scalped in another, without a pang? There may be effminacy in our shuddering at the thought of bloodshed by cruel, unrelenting, remorseless butchers; but if it be masculine, glorious, or praise worthy to deem all things right, that happen;—“ whatever is, is right,” and no-

thing is wrong beyond a stated rule.—A preacher of this doctrine, would never want a crowded congregation, were it possible he could make it orthodox, and then the devil would triumph, where angels should alone preside.

But in the milder language of humanity, in the refinements of civility, society, and universal love,—in the language of reflection, and our duty to the omnipotent Father of finite Man, God forgive all human murderers, and defend us from the contamination of those, who, in their philosophical disquisitions, (which prove nothing) and in the hardness of their hearts can relish to hear (with the same glee that a hound would devour carrion) of the fall of their fellow men by sword or bullet.—If we differ in opinion, that the word War (curse on the word, but more accursed be the effects of it!) includes *legal* murder, it is because no law, or other scientific logic, will persuade us in our weakness, that War and Justice are synonymous, much less so, War and Injustice, according to the stated rules by our constitution long prescribed.

All things are nevertheless said to be safe, according to the language of courtiers, who impudently

prudently tell us that it is impossible to mend them *either in church or state*.—It would be much more sensible in them, to say at once, that we had better take a *Danish* example, and request our god-like King to take the reins of government into his own hands; and at the same time to give us peace, by destroying the power of Lords and Commons, since we might be safer under the government of *one supreme*, be the consequence what it may, than live under the tyranny of some hundreds of corrupted men; otherwise, (like the Romans) by not securing our liberties, in time, or throwing them at the feet of a King, who would possibly take care of them, we may hand down to posterity, not only a picture of our folly, but a deed of conveyance to government, of what should of right descend to a future people without alienation.

The boasted advantages of this country, obtained at the revolution, may be magnified by Bishops and high-church-men, who attribute their glory to the reformation, as much as they please; but experience assures us, that except in the expulsion of the Stuarts, the revolution was not a complete redress of publick abuses, for as Lord Percival said in the House of Commons, A. D. 1744, it was brought about so suddenly

suddenly that it was a wonder we gained what we did.—Would to God the eyes of our ancestors had been wide open to the consequence of what the Revolutionists did not correct! for by leaving those leak holes in the state vessel unrepaired, (which we have observed) the steer-men have driven her on rocks and quicksands for pretended safety, till liberty is so circumscribed and fenced in, that she has almost lost her virtue, and is only permitted to step forth on certain occasions, by her keepers, to amuse us with her periodical beneficence.—Such is the bane of our luxury and corruption, from an increase of which, may providence, and our own endeavours, speedily defend us, and remove from us the disgrace we have brought on ourselves, by submitting to a set of tyrants, whose power owes its existence to our tameness and cowardice, which has increased upon us since the revolution, in proportion as the spirit of liberty has exhaled, under those British distillers, who have found us complying and useful to their purposes.—Hear Lord Bathurst's words in a letter to Dean Swift :

“ In short, the whole nation is so abandoned
 “ and corrupt, that there is always a majority
 “ in both houses of Parliament.—He (meaning
 “ the

“ the King) makes them *all* in one house, and
 “ above *half* in the other. *Four and twenty Bi-*
 “ *shops* and *sixteen* Scotch Peers is a terrible
 “ weight in one. *Forty five* from one country
 “ besides the west of England, and all the
 “ government boroughs, is a dreadful number
 “ in the other.—Were his Majesty inclined to-
 “ morrow to make his body coachman his first
 “ minister, it would do just as well, and the
 “ wheels of government would move as easily
 “ as they do now with the sagacious driver who
 “ sits on the box. Parts and abilities are not
 “ in the least wanting to conduct public affairs.
 “ The coachman knows how to feed his cattle,
 “ the other feeds the beasts in his service, and
 “ this is all the skill that is necessary in either
 “ case.”

If this was our situation at that time, what is
 it now? Simply this.—Parts and abilities are
 employed to sacrifice sense and general utility
 at the shrine of ambition, extravagance, vanity,
 lewdness, gaming, and adultery.—Our gover-
 nors assume more power over us, and have se-
 parated themselves more from our interests than
 then, until intoxicated and lost in their borrow-
 ed importance and our tameness, they have al-
 most forgot that they are men, or that power
 has

has been entrusted to them, for any other use than to employ it for their own advantage and our misfortune. If we are longer silent, we shall dwindle into the most abject tools and instruments to a licentious government. It may be difficult for us to relieve ourselves, but to complain with warmth of public injuries is laudable and right, and though it may not answer every purpose, it will certainly keep our public trespassers in a state of abeyance, and by a jealous watch on their actions, check their iniquitous pursuit.

Let us therefore on the whole, constantly and instantly regard our natural and constitutional liberties, and though we may want power to defend them against ministerial encroachments, let us not forget that sovereignty is truly with us; and that what has been once done, in opposition to a bad ministry, may be done again to effect our welfare, when irritated to do ourselves justice.—Whatever a majority of us desire, it is undoubtedly lawful for us to have, unless contrary to the laws of God.—The difference between the time of Charles I. and the present is this; the opposition was then between a bigoted King and a brave and free Parliament.—Now the opposition is between a corrupt court
joined

joined by a multitude of all ranks and stations, bought with the public money, and the honest independent part of the nation.

Charles the first and his son, claimed a right of governing from divinity, while they governed like devils.—They invaded the law and the constitution.—The father, by his enthusiasm and supineness, neglected the national welfare. The son, by his luxury and dissipation, diffused among the people examples of immorality, which by their adopting, inclined them more favourably to public pollution.—But in regard to his present Majesty, his family and predecessors, since that abandoned age, they derived their regal title from an English statute, and the choice of the people.—There is not (God be praised) the least divinity in our King's right to govern us, beyond what he receives from us. God is in us all,—no more in Kings than peasants, but is equally all in all.—We live not in those dark days, when liege-men and vassals, concurred as of right, with King, Thanes, and Lords, in every thing they did, without contemplating thereon, but we live to glorify the rights *naturally* claimed by our ancestors, and *politically* and *beneficially* enjoyed by them, from the reign

of Henry III. downwards; when the arbitrary (though ignorant) authority of King, Thanes, and Lords began to be curbed, and the people, from the increasing lights of wisdom, became of more consequence than before.

We hear of no divine right of Kings, or passive obedience, until our country was embroiled with civil troubles, the consequence of royal prostitution in *pious* Charles the first.—It was then that the King's authority, and claim to the crown, were urged to descend from heaven; but in that chimera, indulged in the minds of fools and impostors, there was blasphemy, which ultimately brought down the vengeance of God, in the power of his offended people upon *him*, who, by himself, and vitiated friends, attempted to justify an oppressive and unconstitutional reign.—This proves that Kings are politically mortal, and created by mortal man.—They are equally subjects of the common law of our land, and with their ministers, may be spoke of with candid severity, when their conduct requires it notwithstanding they have appeared desirous of a power, to padlock our tongues and pens from speaking or writing, either to illustrate their good, or condemn their bad actions.—If they had such a power, we should be in a state of vassallage,

"wants, and where there is a mutual depen-
 "dence, there is a mutual duty: for instance,
 "the subject must obey his prince, and in those
 "countries that pretend to freedom, princes
 "are subject to those laws the people have chosen.
 "They are bound to protect their subjects, in
 "liberty, property, and religion, to receive their
 "petitions, and redress their grievances.—So
 "that the best prince, in the opinion of wise
 "men, is only the greatest servant in the nation,
 "not only a servant to the public in general,
 "but in some sort to every man in it."

In any other sense, his character would be ar-
 bitrary, and his power founded on the wreck of
 the rights of man;—nothing would support it
 but force.—A limited monarch must govern
 according to law, wherein the subject feels as
 much satisfaction in obedience, as the monarch
 can desire to exact.

"No man, to whom education, in a private
 "station, (or even a palace, if not corrupted by
 "flatterers) had given a philosophical dispositi-
 "on, would be desirous, if he became a King,
 "of arbitrary power; reflections on all the ex-
 "amples which history can produce, would
 "make him wish to govern by laws, and to
 "owe

"I owe his authority as much to their force, as
 "the subject could his liberty."

Thus we see clearly, that if it be the spirit of
 the constitution, that Kings should govern by
 law, we have an undoubted right publicly to com-
 plain of the conduct of their ministers when they
 do wrong; and when such a right requires exer-
 tion, those ministers ought to quit their places, and
 not fall on any part of the people with violence,
 for what they themselves have occasioned.

To conclude, and once more turn to Mr.
 Horne, who being in confinement, for no crime,
 but affronting a corrupt ministry, we must la-
 ment that in him we are insulted and oppressed,
 and waiting with patience an alteration in the
 complexion of political things, rely on an a-
 mendment of the law in cases of libel, by a de-
 struction of information *ex officio*, a definition
 positively what a libel is, and by Juries being
 at liberty to judge of crime as well as fact.

What consequences may be produced from
 the long prevailing system of government, a lit-
 tle time will discover; but whenever it happens
 that the mild voice of influence shall occasion
 worse effects than formerly the stern commands

of prerogative, and that the King's friends, while possessed of more power than an equal balance, between them and the people will allow, shall think they have not enough, but grasp for more; we may then see "in the common course of things, how the same causes can produce different effects and consequences among us, from what they did in Greece and Rome."

As our public affairs now are circumstanced, let us hope a time will soon arrive, when the sun of wisdom will irradiate our political hemisphere, and the glory of our constitution spread its all-cheering rays over our plentiful country; when the ministry will be composed of men, more attached to its prosperity, and less self-interested in their schemes.—A favourable opportunity may then offer for justice to suspend her balance with an equipoise, and distribute to us, and to all men, impartial and equal right.

But why, after all, is Mr. Home to be abused, as we have heard him, in his name and character? He has quitted the church, and alas! is but a man; and creatures of habit, who depending not on their own senses, or having none to depend on, are unhappily hurried away by prejudice and report, to damn the man whom slander,

slander, and conscious demerit, have marked a prey to their hell-born fury.—Some among us know Mr. Horne, and can rescue his reputation from the unhallowed jaws of envy and calumny, by our experience of his general conduct.—His enemies and maligners, who dive with microscopic eyes for faults in him, (disregarding all virtues) are to be pitied for their temerity and folly.—Mercy on Men! for Man on Man hath none.

Grant then, Oh Majesty uncreate, that while abuse may make us cautious, charity and benevolence may keep us out of polluted hands, and make us loving and kind unto each other, neither forgetting our own insignificance, nor neglecting to pay the compassionating tribute for the failings of our fellow worms, whose life daily upbraids thy supernal goodness. Grant, thou King of Kings, thou ruler of worlds, and glorious patron of liberty, that the iron sceptre with which puny tyrants destroy the rights of thy creature, Man, may speedily be broken, and let the human worms of the earth know in conscience, (thy reflected image) that to devour their fellows, or rule with tyranny, was never thy intention.—Assert thy mighty power and sovereign dominion over those, who impiously wish to be thy vice.

ribe-guards on earth, and strive toward it in
 their diligent ministry. — And the hearts of
 those, whose situation enables them to reflect
 untroubled and without compulsion, on unalien-
 able rights and privileges. — The exercise of
 civil and religious liberty will then prove victo-
 rious. — The law will not be extended beyond
 the bounds of our constitution. — Crimes, tres-
 passes, and misdemeanors, will become positive,
 and not imaginary. — Juries will exert their duty,
 and none of us be subject to the perilous venge-
 ance of our constituted rulers, for constructed
 offences, unjudged, and undetermined, except
 by themselves.

Your may keep us out of poll-tax
 make us loving and kind to each other, nei-
 ther forgetting our own weakness, nor neg-
 lecting to pay the compassionate tribute for
 the failings of our fellow-creatures, who like our-
 selves are liable to error and sin. — Grant, then,
 King of Kings, thou ruler of worlds, and glo-
 rious patron of liberty, that the non-resistance
 which purvey toward the rights of thy crea-

ture, may be wisely and justly
 in conscience, thy
 E R R A T A.
 Page 7, line 16, for *far*, read *farther*.
 Page 10, line 8, for *rests*, read *vests*.
 Page 10, line 10, for *affairs*, read *officers*.
 Page 11, line 24, for *were and*, read *and were*.
 Page 50, line 7, for *distinguis*, read *distinguish*.

Some inaccuracies in the pointing, which the candid
 reader is craved to excuse.